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1	EDMUND G. BROWN JR., Attorney General of the State of California		
2	FRANK H. PACOE Supervising Deputy Attorney General		
3	LESLIE E. BRAST, State Bar No. 203296 Deputy Attorney General		
4	455 Golden Gate Avenue, Suite 11000		
5	San Francisco, CA 94102-7004 Telephone: (415) 703-5548		
6	Facsimile: (415) 703-5480		
7	Attorneys for Complainant		
8	BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS		
9	STATE OF CALIFORNIA		
10	In the Matter of the Accusation Against: Case No. 7008-29		
11	In the Matter of the Accusation Against: Case No. 2008-290 DAVID JOE CHAVEZ		
12	10304 McNight N.E. A C C U S A T I O N		
13	Albuquerque, NM 87112		
14	Registered Nurse License No. 665788		
15	Respondent.		
16	Complainant alleges:		
17	<u>PARTIES</u>		
18	1. Ruth Ann Terry, M.P.H., R.N. (Complainant), brings this Accusation		
19	solely in her official capacity as the Executive Officer of the Board of Registered Nursing		
20	(Board), Department of Consumer Affairs.		
21	2. On or about September 16, 2005, the Board issued Registered Nurse		
22	License Number 665788 to David Joe Chavez (Respondent). The license was in full force and		
23	effect at all times relevant to the charges brought herein; it expired on April 30, 2007, and has not		
24	been renewed.		
25	<u>JURISDICTION</u>		
26	3. This Accusation is brought before the Board under the authority of the		
27	following laws. All section references are to the Business and Professions Code (Code) unless		
28	otherwise indicated.		

	4.	Code section 2750 provides, in pertinent part, that the Board may
discipline any	licensee	e, including a licensee holding a temporary or an inactive license, for any
eason provide	ed in Ar	ticle 3 (commencing with section 2750) of the Nursing Practice Act.

5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

6. Code section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
- (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions."
 - 7. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

8. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

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9. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

- (1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.
- (2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.
- (3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.
- (4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.
- (5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.
- (6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

COST RECOVERY

10. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay reasonable investigation and enforcement costs of the case.

FACTUAL BACKGROUND

1	<u>FACTUAL BACKGROUND</u>
2	11. On or about October 13, 2005, Respondent was working as a traveling
3	registered nurse assigned to the emergency department at O'Conner Hospital in San Jose. Patient
4	John Doe¹ arrived by ambulance; he was agitated and uncooperative. Respondent and an
.5	Emergency Room (ER) Technician began to remove Patient Doe's clothing and change him into
6	a hospital gown, assisted by a Licensed Vocational Nurse (LVN). Respondent briefly left the
7	room to retrieve intravenous (IV) supplies. When he returned, the patient appeared to be asleep.
. 8	Respondent inserted the IV needle, arousing the patient who spit and cursed at Respondent.
9	Respondent cursed at the patient, struck him in the face and pushed his fingers against the
. 10	patient's temple, causing a skin tear around the patient's eyebrow. The ER Technician
11	intervened between the two, held the patient's face to the side, and instructed the LVN to retrieve
12	a face mask for the patient to prevent further spitting. Patient Doe then settled down and
13	Respondent placed an IV line in the patient's other arm. Respondent did not report the incident
14	to a physician or seek an order for medication to calm the patient or for soft restraints.
15	Immediately following the incident, Respondent grabbed the LVN's shoulder, frightening her,
16	and remarked, "I hate when I lose control like that." Respondent later admitted to the Director of
17	Emergency Services that he was "more aggressive" with Patient Doe than he should have been.
18	Respondent neither documented nor informed anyone about the incident.
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FIRST CAUSE FOR DISCIPLINE

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(Gross Negligence: Physical Abuse of Patient)

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12. Respondent is subject to disciplinary action under Code section 2761, subdivision (a)(1), for gross negligence in that he struck a patient, as described in paragraph 11,

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above.

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1. The patient's identity is unknown as he carried no identification and declined to provide hospital staff with his name or other identifying information. He was admitted, treated and released as a John Doe.

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1	SECOND CAUSE FOR DISCIPLINE
2	(Verbal Abuse of Patient)
3	13. Respondent is subject to disciplinary action under Code section 2761,
4	subdivision (a), for unprofessional conduct in that he verbally abused a patient, as described in
5	paragraph 11, above.
6	THIRD CAUSE FOR DISCIPLINE
7	(Incompetence and/or Gross Negligence: Failure to Seek Physician Order)
8	14. Respondent is subject to disciplinary action under Code section 2761,
9	subdivision (a)(1), for gross negligence and/or incompetence in that he failed to seek a
10	physician's order for medication or soft restraints before starting IV catheterization of a
11	combative patient, as described in paragraph 11, above.
12	FOURTH CAUSE FOR DISCIPLINE
13	(Failure to Document Incident)
14	15. Respondent is subject to disciplinary action under Code section 2761,
15	subdivision (a), for unprofessional conduct in that he failed to document an incident in which a
16	patient was injured after being struck and/or restrained by Respondent, as described in paragraph
17	11, above.
18	FIFTH CAUSE FOR DISCIPLINE
19	(Failure to Report Incident)
20	16. Respondent is subject to disciplinary action under Code section 2761,
21	subdivision (a), for unprofessional conduct in that he failed to report an incident in which a
22	patient was injured after being struck and/or restrained by Respondent, as described in paragraph
23	11, above.
24	SIXTH CAUSE FOR DISCIPLINE
25	(Inappropriate Physical Contact with Co-Worker)
26	17. Respondent is subject to disciplinary action under Code section 2761,
27.	subdivision (a), for unprofessional conduct in that he grabbed a co-worker's shoulder, as
28	described in paragraph 11, above.

PRAYER WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision: Revoking or suspending Registered Nurse License Number 665788, issued 1. to David Joe Chavez; 2. Ordering David Joe Chavez to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and, 3. Taking such other and further action as deemed necessary and proper. **Executive Officer** Board of Registered Nursing Department of Consumer Affairs State of California Complainant SF2008400935 40233605.wpd